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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ENOCH ADAMS, JR., LEROY ADAMS,)	
ANDREW KOENIG, JERRY NORTON,)	
DAVID SWAN, JOSEPH SWAN,)	
Plaintiffs,)	
)	
vs.)	
)	
TECK COMINCO ALASKA)	
INCORPORATED,)	
Defendant,)	
)	
NANA REGIONAL CORPORATION, and)	
NORTHWEST ARCTIC BOROUGH,)	
Intervenor-Defendants.)	Case No.: A04-00049 CV (JWS)
_____)	

JOINT STATEMENT OF UNCONTESTED FACTS

The parties have stipulated that the following are facts in this case to be accepted by the court as true:

1. Kivalina is a coastal city/village within the Northwest Arctic Borough.
2. Kivalina is located between the Chukchi Sea and the Kivalina Lagoon, near the mouth of the Wulik River.
3. Red Dog Mine is located in the DeLong Mountains, and is within the Northwest

Arctic Borough.

4. Kivalina's municipal water supply obtains drinking water from the Wulik River.
5. The Middle Fork Red Dog Creek flows into the Main Stem Red Dog Creek. The Main Stem Red Dog Creek flows into Ikalukrok Creek. Ikalukrok Creek flows into the Wulik River.
6. Outfall 001 is on Middle Fork Red Dog Creek, 66 miles upstream from the point where Kivalina draws its drinking water from the Wulik River.
7. Teck Cominco Alaska Incorporated (Teck Cominco), formerly known as Cominco Alaska Incorporated, is the operator of Red Dog Mine. The land and minerals comprising the mine are owned by NANA Regional Corporation.
8. The Northwest Arctic Borough is the regional government encompassing the NANA Region.
9. Teck Cominco has NPDES permits issued by the U.S. Environmental Protection Agency (EPA), including a permit that allows the discharge of treated water at Outfall 001 into Middle Fork Red Dog Creek.
10. The Red Dog mine is the world's largest zinc mine, and its zinc deposit is the largest known zinc resource in the world. It produces approximately seven percent of the world's mined zinc. The mine began operating in 1989, and its expected life runs to 2031.
11. Red Dog Mine produced 1,148,000,000 pounds of zinc in 1999.
12. Red Dog Mine produced 1,170,000,000 pounds of zinc in 2000.
13. Red Dog Mine produced 1,141,000,000 pounds of zinc in 2001.

14. The Red Dog mine is an open-pit ore mine operating year-round. After the ore is removed from the pit, it is processed to extract zinc and lead, the mine's primary products.
15. Waste ore and water from processing are placed in a tailings impoundment, a storage area designed to keep the tailings and water in one place.
16. Water from the impoundment is treated before being discharged into Middle Fork Red Dog Creek at Outfall 001.
17. Discharge at Outfall 001 is seasonal, typically beginning in May and ending by early October.
18. The DeLong Mountain Transportation System (DMTS) consists of a toll based road and port belonging to the State of Alaska's Alaska Industrial Development and Export Authority (AIDEA). The DMTS road connects Red Dog Mine with the DMTS port.
19. The DMTS road passes through a portion of Cape Krusenstern National Monument.
20. At the DMTS port, zinc and lead concentrates are each stored in one of two concentrate storage buildings until they can be shipped. Shipping from the port occurs only when the Chukchi Sea is ice-free.
21. The EPA administers the NPDES permit program in the State of Alaska.
22. On July 10, 1985, EPA issued NPDES Permit No. AK-003865-2 to Cominco Alaska Incorporated for the wastewater treatment plant at Red Dog Mine. That Permit was scheduled to expire on July 9, 1990. Cominco timely submitted an application to

EPA for renewal of the Mine Permit, which administratively extended the permit

beyond its scheduled expiration.

23. In 1998, the aquatic life criterion for fresh water TDS for all Alaska waters that had not been assigned a site specific criteria was 1500 mg/L or one-third above background conditions, whichever was less.
24. Teck Cominco, when it learned that a TDS effluent limitation would likely be added to the renewed permit, initiated discussions with the Alaska Department of Environmental Conservation (ADEC) about the development of a site-specific criterion for TDS.
25. The NPDES permit for the mine was reissued by EPA on August 28, 1998.
26. A new water treatment plant came on line at the mine in the summer of 2005.
27. A permit modification was issued effective August 22, 2003.
28. Because of an administrative appeal to the EPA's Environmental Appeals Board ("EAB"), portions of that permit modification were automatically stayed pending a ruling by the EAB on their appeal. All of the modified permit became effective by no later than June 15, 2004, except for the in-stream limitation on total dissolved solids applicable during the Arctic Grayling spawning season.
29. On August 28, 2003, the 1998 permit as modified was administratively extended until a renewed permit is issued.
30. A renewed permit was issued on March 7, 2007, to be effective April 12, 2007 ("2007 permit"). Before the permit took effect, it was appealed to the EAB.
31. On September 27, 2007, the EPA withdrew the 2007 permit. The administratively

extended NPDES permit conditions that were in effect prior to the March 7, 2007

permit issuance remain in effect until a renewed permit is issued.

32. Discharge Monitoring Reports (DMRs) are sent each month to the EPA, and, among others, the Mayor of Kivalina and the President of the Kivalina IRA Council. Teck Cominco is required to file a DMR for the mine and a DMR for the port each month
33. The DMRs typically include a narrative portion, tables, exhibits and a cover letter.
34. The August 2003 permit modification raised the TDS limitation at Outfall 001 to 3,900 mg/L.
35. Station 151 is located at the end of a mixing zone in Red Dog Creek
36. Teck Cominco has estimated TDS levels at Station 151 greater than 1000 mg/L after March 30, 2004 and before June 15, 2004.
37. Teck Cominco has measured TDS levels at Station 151 greater than 500 mg/L after March 30, 2004 and before June 15, 2004.
38. The water temperature at Station 10 rose above 3° C on May 26, 2007 for a short period of time. Per the Alaska Department of Natural Resources Office of Habitat Management and Permitting, this indicates the potential start of Grayling spawning. In 2007, grayling spawning was completed on June 2.
39. In 2005, the Arctic Grayling spawning season was determined to have begun on May 24 and was completed by June 6.
40. EPA has issued Compliance Orders by Consent (COBCs) to Teck Cominco, extending deadlines by which Teck Cominco must comply with its permits and establishing limitations for certain parameters.

41. None of the monitoring data for the Wulik River from 1998 forward for Cd, Total

CN or WAD exceed federal primary drinking-water standards for municipal water supplies

42. Test America was formerly known as NCA.
43. In 2005, Teck Cominco began discharge from Outfall 001 on May 10.
44. In 2006, Teck Cominco began discharge from Outfall 001 on May 9.
45. In 2007, Teck Cominco began discharge from Outfall 001 on May 25.
46. Gene Andrews prepared the following reports:

Effluent Treatment and Water Management for TDS Control Red Dog Mine

(Gene Andrews, Environmental Associate, December 1996)

TDS Effluent Treatment and Water Management for TDS Control Red Dog Mine

(Gene Andrews, Environmental Associate, August 1997)


1999 - Update Effluent Treatment and Water Management for TDS Control Red

Dog Mine (Gene Andrews, Environmental Associate, March 1999)

DATED at Anchorage, Alaska, this 22nd day of January, 2008.

HARTIG RHODES HOGE & LEKISCH, P.C.
Attorneys for Teck Cominco Alaska, Inc.

By: _____


Sean Halloran

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 2007,
a true and correct copy of the foregoing was served,
via electronic service, on the below identified parties of
record:

Luke W. Cole
Center on Race, Poverty, & the Environment
47 Kearny Street, Suite 804
San Francisco, California 94108

Nancy S. Wainwright (via U.S. Mail only)

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